

to do. In any event the answer to the applicant's complaint can be found at p 287 of the *Sabah Banking Employees' Union* case² where it is stated:

So too was its calculation of EPF benefits. Errors in such calculations or in other factual considerations would not, in our view, go to the Industrial Court's jurisdiction.

It is to be noted that the Act does not specify the formula for the computation on the rates of pay and the legislature thought it best to leave it to the Industrial Court to find the basis for such computation as can be seen from s 30(4) and (5) which read:

(4) In making its award in respect of a trade dispute, the Court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.

(5) The court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

I would in the circumstances hold that the errors, if any, in the computation by the Industrial Court here do not go to the Industrial Court's jurisdiction and therefore there are no grounds for me to issue the order of certiorari as prayed for by the applicant.

For the reasons stated by me I dismiss this originating motion with costs.

Application dismissed.

Solicitors: *Sulong Matjeraie & Co Advocates; Sim & Tee Advocates.*

Reported by *Azra Moiz*

A Standard Chartered Bank v Kentland Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D2-23-2688-1987

ZAKARIA YATIM J
4 APRIL 1990

B *Civil Procedure — Appeal — Decision of registrar — Rehearing — Admission of further evidence by affidavit — Rules of the High Court 1980, O 56*

The plaintiff's application for summary judgment, alternatively that the defence be struck out, was dismissed by the registrar. On appeal, the plaintiff sought to rely on an affidavit filed after the original hearing. The second defendant objected.

C *Held*, ruling that it was proper for the court to consider the new evidence:

(1) An appeal from the registrar to a judge-in-chambers operates by way of rehearing and it was common practice for the judge, subject to the question of costs, to admit further or additional evidence.

(2) The plaintiff was therefore entitled to rely on the affidavit filed after the hearing before the registrar.

Cases referred to

- E** 1 *Krakauer v Katz* [1954] 1 All ER 244 (distd)
2 *Ladd v Marshall* [1954] 1 WLR 1489 (distd)
3 *Langdale & Anor v Danby* [1982] 3 All ER 129 (distd)
4 *Kin May Construction Co Ltd v Wai Cheong Co Ltd & Anor* 29 BLR 137 (folld)

Legislation referred to

F Rules of the High Court 1980 O 56

Cecil Abraham (S Radhakrishnan with him) for the plaintiffs.
SC Loh for the second defendant.

Cur Adv Vult

G **Zakaria Yatim J:** This is an appeal by the plaintiff against the decision of the senior assistant registrar given on 11 May 1988 dismissing the two alternative prayers in the plaintiff's amended summons-in-chambers, namely, to enter final judgment against the second defendant for a sum of \$2m pursuant to O 14; alternatively to strike out the defence of the second defendant pursuant to O 18 r 19 of the Rules of the High Court 1980.

H At the commencement of the hearing of the appeal before me in chambers, Mr Cecil Abraham, counsel for the plaintiff, asked me to consider an affidavit filed by the plaintiff on 17 June 1988, that is after the senior assistant registrar had made his decision. Mr SC Loh, counsel for the second defendant, submitted that the said affidavit should not be considered.

I In support of his submission, Mr Loh relied on the decision of the English Court of Appeal in *Krakauer v Katz*¹ and in *Ladd v Marshall*.² In *Krakauer v Katz*¹ an interlocutory matter was heard by a judge-in-chambers.

At the hearing, counsel for the defendant was asked whether he required an adjournment in order to answer the plaintiff's affidavit. He said he did not. On appeal, the defendant sought to adduce further evidence by affidavit. Denning LJ, as he then was, considered whether in an interlocutory matter the Court of Appeal could admit further affidavits on behalf of the defendant. He said that it was a matter of discretion in the Court of Appeal whether or not further evidence by affidavit should be admitted. Denning LJ ruled that in the circumstances of that case it was not proper to introduce further evidence by affidavit in the Court of Appeal. *Ladd v Marshall*² was a case decided after a trial. In that case, the plaintiff applied in the Court of Appeal for leave to adduce further evidence by recalling a witness. The Court of Appeal refused to grant the leave. *Ladd v Marshall*² therefore is not relevant to the present case.

In *Langdale & Anor v Danby*,³ the House of Lords considered whether on hearing an appeal against a summary judgment given in favour of a plaintiff the Court of Appeal had an unfettered discretion to receive further evidence or whether it could only do so on special grounds. The House of Lords held that it would be a great injustice to the plaintiff to allow the defendant to produce for the first time on appeal evidence which had been readily available at the hearing of the application but was not produced.

It will be noted that in *Krakauer's* case¹ and *Langdale's* case,³ the issue was whether fresh affidavits could be introduced in the Court of Appeal on an appeal from the decision of a judge-in-chambers. The situation in the two cases does not apply in the present case.

In the instant case, a judge is hearing in chambers an appeal against the decision of the senior assistant registrar. An appeal from the registrar to the judge-in-chambers is dealt with by way of an actual rehearing of the application which led to the order under appeal. The judge

A hearing the appeal treats the matter as though it came before him for the first time. It is common practice for the judge-in-chambers, subject of course to the question of costs, to admit further or additional evidence by affidavit to that which was before the registrar: *Supreme Court Practice* (1988) Vol 1, p 834. See also *Mallal's Supreme Court Practice* (2nd Ed) p 680.

B For the reasons I have just stated, I ruled that this was a proper case for the court to consider the affidavit filed by the plaintiff on 17 June 1988.

C On the application of Mr SC Loh, I adjourned the matter into open court for further argument under O 56 r 2(2) of the Rules of the High Court 1980. At the hearing of the further argument in open court, Mr William Leong, counsel for the second defendant, referred to a decision of the High Court of Hong Kong in *Kin May Construction Co Ltd v Wai Cheong Co Ltd & Anor*.⁴ In that case, the plaintiffs commenced proceedings to recover a sum of money and issued a summons under O 14. The master heard the plaintiffs' application and gave judgment for the amount claimed together with interest and costs. On appeal to the judge, the defendants sought to adduce additional evidence including two documents which were conceded by the plaintiffs to be valid. The learned judge ruled that he was unable to find any reason for excluding the additional evidence.

F In my opinion, the decision in *Kin May Construction*⁴ is consistent with the ruling I made in chambers. In the circumstances, I confirm my earlier ruling and order that the costs of further argument shall be taxed and be paid by the second defendant to the plaintiff.

Order accordingly.

Solicitors: *Shearn Delamore & Co; Cheang & Ariff.*

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Reported by *Mathavan Devadas*